

**OPINION
62-76**

March 14, 1962 (OPINION)

COUNTY LIBRARY

RE: Establishment - Mandatory or Discretionary

This is in reply to your inquiry in regard to establishment and maintenance of Wells County library service pursuant to chapter 40-38 of the North Dakota Century Code.

You ask whether:

1. Is it mandatory for the Board of County Commissioners to establish a library fund and enter a levy and cause necessary taxes to be collected?
2. Do the Commissioners alone determine if the levy should be one or two mills?
3. If this public library fund is created, can the Board of County Commissioners add a future annual levy discontinue levying for said fund?"

You further request any other opinions that may have been issued concerning libraries that are not contained in the Report of the Attorney General from July 1, 1958 to June 30, 1960.

I believe your first question is well answered by the copy of letter of February 7, 1962, enclosed herewith, holding in effect that the governing body could refuse to establish the library service even after the petition, but indicating that same would probably be inadvisable.

In reply to your second question, we believe much the same principle would apply. However, we believe some consideration should also be given to the precise wording of the application statutory provisions. Thus, section 40-38-01 of the North Dakota Century Code provides that the governing body ". . . shall have power to establish and maintain public library service" Section 40-38-02 provides that the ". . . governing body of a . . . county authorizing the same shall establish a library fund by annually levying and causing to be collected . . . a . . . county tax not to exceed . . . two mills on the net taxable assessed valuation of property in such county. . . ." The Board of directors is given power ". . . 3. To control, exclusively, the expenditures of all moneys collected for or contributed to the library fund;" (See: Section 40-38-04 of the North Dakota Century Code). However, it is not specifically authorized to determine such amount.

In reply to your third question, we believe the opinion of September 27, 1961, copy of which is hereto attached, sets out the latest thought of this office on possible termination of the library service in the particular circumstances there concerned.

Pursuant to your request, we are enclosing herewith Thermofax copies of the basic opinions and letters issued by this office (other than those you refer to contained in the Report of the Attorney General from July 1, 1958 to June 30, 1960) since the adoption of the Federal Library Services Law. Our files are quite extensive in regard to public libraries generally, and we believe the enclosed constitute the appropriate opinions under the present state of law.

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Attorney General